

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:02CR3121
)	
Plaintiff,)	MEMORANDUM
vs.)	AND ORDER
)	
PABLO FAVELA-CORRAL,)	
)	
Defendant.)	

This matter is before the court on Defendant's pro se notice of appeal (filing 176), and on the clerk's memorandum (filing 177) regarding such filing. The notice of appeal was apparently filed with reference to the court's memorandum, order, and judgment of November 16, 2006 (filings 174 & 175), which denied Defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 for the reason that "a second or successive [§ 2255] motion may not be filed without prior appellate court approval in the manner provided in 28 U.S.C. § 2244." (Filing 174.)

Before Defendant can proceed, a certificate of appealability must issue. See Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a district court denies a § 2255 motion on procedural grounds without reaching the applicant's underlying constitutional claims on the merits, a certificate of appealability should issue under § 2253(c) when "the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

For the reasons set forth in the court's memorandum and order entered on November 16, 2006 (filing 174), the court concludes that the defendant has not made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c). Accordingly,

IT IS ORDERED that:

1. A certificate of appealability shall not issue in this case; and
2. The Clerk of Court shall transmit a copy of this memorandum and order to the United States Court of Appeals for the Eighth Circuit.

December 14, 2006.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge